

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 230

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Phil A. Griego

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO COMMERCIAL VEHICLE DRIVERS; UPDATING, CLARIFYING
AND REORGANIZING SECTIONS OF THE MOTOR VEHICLE CODE APPLYING TO
COMMERCIAL MOTOR VEHICLE DRIVERS; INCREASING PENALTIES FOR
CERTAIN VIOLATIONS; REORGANIZING CONVICTION REPORTING
REQUIREMENTS THAT APPLY ONLY TO COMMERCIAL VEHICLE DRIVERS;
AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-3-7 NMSA 1978 (being Laws 1989,
Chapter 201, Section 7) is amended to read:

"65-3-7. QUALIFICATIONS OF DRIVERS.--

A. A person shall not drive a motor vehicle unless
[he] the person is qualified to drive a motor vehicle, and a
motor carrier shall not require or permit a person to drive a
motor vehicle unless that person is qualified to drive a motor

.174561.1SA

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 vehicle.

2 B. A person is qualified to drive a commercial
3 motor carrier vehicle if ~~[he]~~ the person:

4 (1) is at least:

5 (a) twenty-one years old; or

6 ~~[(2) is at least]~~ (b) eighteen years
7 old if involved only in intrastate commerce and drives only
8 within the boundaries of the state of New Mexico;

9 ~~[(3)]~~ (2) is physically qualified to drive a
10 motor vehicle;

11 ~~[(4)]~~ (3) is not disqualified from driving a
12 motor vehicle;

13 ~~[(5)]~~ (4) has been issued a currently valid
14 motor vehicle operator's license or permit of the proper class
15 for the vehicle ~~[he]~~ that the person is driving;

16 ~~[(6)]~~ (5) can, by reason of experience,
17 training or both, safely operate the type of motor vehicle ~~[he]~~
18 that the person drives; and

19 ~~[(7)]~~ (6) can, by reason of experience,
20 training or both, determine whether the cargo ~~[he]~~ that the
21 person transports is properly located, distributed and secured
22 in or on the motor vehicle ~~[he]~~ that the person drives.

23 ~~[C. The director may adopt regulations pertaining~~
24 ~~to the qualification and disqualification of commercial motor~~
25 ~~carrier vehicle drivers, including documentation thereof. The~~

.174561.1SA

underscored material = new
[bracketed material] = delete

1 ~~regulations shall include but not be limited to background and~~
2 ~~character, road testing and written examination, physical~~
3 ~~qualification, examination and waivers of certain physical~~
4 ~~defects.~~

5 ~~D.]~~ C. The director shall adopt regulations
6 requiring motor carriers to maintain appropriate records
7 pertaining to the qualifications of every commercial motor
8 carrier vehicle driver in its employ, either regularly or
9 casually. Such regulations shall not be inconsistent with or
10 more stringent than applicable federal safety standards.

11 ~~[E.]~~ D. The director is authorized to adopt
12 specific exceptions for the qualifications of drivers under the
13 Motor Carrier Safety Act for drivers of articulated farm
14 vehicles and intrastate drivers of motor vehicles transporting
15 combustible liquids.

16 ~~[F. Any disqualification after receipt of a~~
17 ~~license shall be grounds for revocation of the license.]"~~

18 Section 2. Section 65-3-14 NMSA 1978 (being Laws 2007,
19 Chapter 151, Section 1) is amended to read:

20 "65-3-14. DRUG AND ALCOHOL TESTING PROGRAM--REPORT OF
21 POSITIVE TEST.--

22 A. A motor carrier shall have an in-house drug and
23 alcohol testing program that meets the requirements of 49
24 C.F.R. part 382 or be a member of a consortium, as defined in
25 49 C.F.R. part 382.107, that provides testing that meets the

.174561.1SA

underscored material = new
[bracketed material] = delete

1 requirements of C.F.R. part 382.

2 ~~[B. At the time of registration or renewal of~~
3 ~~registration of a commercial motor vehicle, a motor carrier~~
4 ~~shall certify to the department and to the motor vehicle~~
5 ~~division of the taxation and revenue department that the motor~~
6 ~~carrier is in compliance with the requirements of Subsection A~~
7 ~~of this section. If the motor carrier is a member of a~~
8 ~~consortium, the motor carrier shall provide the names of the~~
9 ~~persons who operate the consortium.]~~

10 B. A person or entity specified in 49 C.F.R. part
11 382.103, who is not explicitly excepted by New Mexico law, is
12 subject to the provisions of this section and shall report
13 positive test results or a refusal to submit to a test pursuant
14 to provisions in this section. A refusal to submit to a pre-
15 employment test shall not be considered a violation of this
16 section.

17 C. When a ~~[medical review officer of a motor~~
18 ~~carrier's testing program or of the consortium to which the~~
19 ~~motor carrier belongs]~~ person or entity specified in 49 C.F.R.
20 part 382.103 determines that a positive test result is valid,
21 the ~~[officer]~~ person or entity shall report the findings to the
22 motor vehicle division of the taxation and revenue department.
23 The motor vehicle division shall enter the report of a positive
24 test [results] result or refusal to submit to a test on the
25 reported person's motor vehicle record so that it can be

.174561.1SA

underscored material = new
[bracketed material] = delete

1 contained in the commercial driver's license information system
2 pursuant to the New Mexico Commercial Driver's License Act.

3 D. The division shall keep the report of a positive
4 test result or the refusal to submit to a test in the motor
5 vehicle record of the driver for five years from the time the
6 report was received by the motor vehicle division."

7 Section 3. Section 66-1-4.3 NMSA 1978 (being Laws 1990,
8 Chapter 120, Section 4, as amended) is amended to read:

9 "66-1-4.3. DEFINITIONS.--As used in the Motor Vehicle
10 Code:

11 A. "camping body" means a vehicle body primarily
12 designed or converted for use as temporary living quarters for
13 recreational, camping or travel activities;

14 B. "camping trailer" means a camping body, mounted
15 on a chassis, or frame with wheels, designed to be drawn by
16 another vehicle and that has collapsible partial side walls
17 that fold for towing and unfold at the campsite;

18 C. "cancellation" means that a driver's license is
19 annulled and terminated because of some error or defect or
20 because the licensee is no longer entitled to the license, but
21 cancellation of a license is without prejudice, and application
22 for a new license may be made at any time after cancellation;

23 D. "casual sale" means the sale of a motor vehicle
24 by the registered owner of the vehicle if the owner has not
25 sold more than four vehicles in that calendar year;

.174561.1SA

underscoring material = new
[bracketed material] = delete

1 E. "chassis" means the complete motor vehicle,
2 including standard factory equipment, exclusive of the body and
3 cab;

4 F. "collector" means a person who is the owner of
5 one or more vehicles of historic or special interest who
6 collects, purchases, acquires, trades or disposes of these
7 vehicles or parts thereof for the person's own use in order to
8 preserve, restore and maintain a similar vehicle for hobby
9 purposes;

10 G. "combination" means any connected assemblage of
11 a motor vehicle and one or more semitrailers, trailers or
12 semitrailers converted to trailers by means of a converter
13 gear;

14 H. "combination gross vehicle weight" means the sum
15 total of the gross vehicle weights of all units of a
16 combination;

17 I. "commerce" means the transportation of persons,
18 property or merchandise for hire, compensation, profit or in
19 the furtherance of a commercial enterprise in this state or
20 between New Mexico and a place outside New Mexico, including a
21 place outside the United States;

22 J. "commercial motor vehicle" means a
23 self-propelled or towed vehicle, other than special mobile
24 equipment, used on public highways in commerce to transport
25 passengers or property when the vehicle:

.174561.1SA

underscored material = new
[bracketed material] = delete

1 (1) is operated interstate and has a gross
2 vehicle weight rating or gross combination weight rating, or
3 gross vehicle weight or gross combination weight, of four
4 thousand five hundred thirty-six kilograms, or ten thousand one
5 pounds or more; or is operated only in intrastate commerce and
6 has a gross vehicle weight rating or gross combination weight
7 rating, or gross vehicle weight or gross combination weight, of
8 twenty-six thousand one or more pounds;

9 (2) is designed or used to transport more than
10 eight passengers, including the driver, and is used to
11 transport passengers for compensation;

12 (3) is designed or used to transport sixteen
13 or more passengers, including the driver, and is not used to
14 transport passengers for compensation; or

15 (4) is used to transport hazardous materials
16 of the type or quantity requiring placarding under rules
17 prescribed by applicable federal or state law;

18 K. "controlled-access highway" means every highway,
19 street or roadway in respect to which owners or occupants of
20 abutting lands and other persons have no legal right of access
21 to or from the highway, street or roadway except at those
22 points only and in the manner as may be determined by the
23 public authority having jurisdiction over the highway, street
24 or roadway;

25 L. "controlled substance" means any substance

underscored material = new
[bracketed material] = delete

1 defined in Section 30-31-2 NMSA 1978 as a controlled substance;

2 M. "converter gear" means any assemblage of one or
3 more axles with a fifth wheel mounted thereon, designed for use
4 in a combination to support the front end of a semitrailer but
5 not permanently attached thereto. A converter gear shall not
6 be considered a vehicle, as that term is defined in Section
7 66-1-4.19 NMSA 1978, but weight attributable thereto shall be
8 included in declared gross weight;

9 N. "conviction" [means]:

10 (1) [~~an unvacated adjudication of guilt, or a~~
11 ~~determination that a person has violated or failed to comply~~
12 ~~with the law by:~~

13 (a) ~~a court of original jurisdiction;~~

14 or

15 (b) ~~an authorized administrative~~
16 ~~tribunal if the person who has violated the law or failed to~~
17 ~~comply with the law holds a valid commercial driver's license;~~

18 (2) ~~an unvacated forfeiture of bail or~~
19 ~~collateral deposited to secure a person's appearance in court;~~

20 (3) ~~a plea of guilty or nolo contendere~~
21 ~~accepted by the court;~~

22 (4) ~~the payment of a fine or court cost;~~

23 (5) ~~a violation of a condition of release~~
24 ~~without bail, regardless of whether the payment is rebated,~~
25 ~~suspended or probated; or~~

.174561.1SA

underscored material = new
[bracketed material] = delete

1 ~~(6) an assignment to a diversion program or a~~
2 ~~driver improvement school]~~ means:

3 (a) a finding of guilt in the trial
4 court in regard to which the violator has waived or exhausted
5 all rights to appeal;

6 (b) a plea of guilty or nolo contendere
7 accepted by the court;

8 (c) an unvacated forfeiture of bail or
9 collateral deposited to secure a person's appearance in court;
10 or

11 (d) the promise to mail a payment on a
12 penalty assessment; and

13 (2) does not include the imposition of a
14 sentence;

15 0. "crosswalk" means:

16 (1) that part of a roadway at an intersection
17 included within the connections of the lateral lines of the
18 sidewalks on opposite sides of the highway measured from the
19 curbs or, in the absence of curbs, from the edges of the
20 traversable roadway; and

21 (2) any portion of a roadway at an
22 intersection or elsewhere distinctly indicated for pedestrian
23 crossing by lines or other markings on the surface; and

24 P. "curb cut" means a short ramp through a curb or
25 built up to the curb."

.174561.1SA

underscored material = new
[bracketed material] = delete

1 Section 4. Section 66-5-54 NMSA 1978 (being Laws 1989,
2 Chapter 14, Section 3, as amended) is amended to read:

3 "66-5-54. DEFINITIONS.--As used in the New Mexico
4 Commercial Driver's License Act:

5 A. "commerce" means:

6 (1) trade, traffic or transportation within
7 the jurisdiction of the United States between a place in New
8 Mexico and a place outside of New Mexico, including a place
9 outside of the United States; and

10 (2) trade, traffic or transportation in the
11 United States that affects any trade, traffic or transportation
12 described in Paragraph (1) of this subsection;

13 B. "commercial driver's license holder" means an
14 individual to whom a license has been issued by a state or
15 other jurisdiction, in accordance with the standards found in
16 49 C.F.R. part 383, as amended or renumbered, that authorizes
17 the individual to operate a commercial motor vehicle;

18 ~~[B.]~~ C. "commercial driver's license information
19 system" means the information system created pursuant to the
20 federal Commercial Motor Vehicle Safety Act of 1986 that
21 contains information pertaining to operators of commercial
22 motor vehicles;

23 ~~[C.]~~ D. "commercial motor vehicle" means a motor
24 vehicle or combination of motor vehicles used in commerce to
25 transport passengers or property if the motor vehicle:

.174561.1SA

underscored material = new
[bracketed material] = delete

1 (1) has a gross combination weight rating of
2 more than twenty-six thousand pounds inclusive of a towed unit
3 with a gross vehicle weight rating of more than ten thousand
4 pounds;

5 (2) has a gross vehicle weight rating of more
6 than twenty-six thousand pounds;

7 (3) is designed to transport sixteen or more
8 passengers, including the driver; or

9 (4) is of any size and is used in the
10 transportation of hazardous materials, [~~which requires the~~
11 ~~motor vehicle to be placarded under applicable law~~] as
12 hazardous materials are defined in 49 C.F.R. part 383.5;

13 E. "conviction" means:

14 (1) an unvacated adjudication of guilt or a
15 determination that a person has violated or failed to comply
16 with the law by:

17 (a) a court of original jurisdiction; or

18 (b) an authorized administrative
19 tribunal;

20 (2) an unvacated forfeiture of bail or
21 collateral deposited to secure a person's appearance in court;

22 (3) a plea of guilty or nolo contendere
23 accepted by the court;

24 (4) the payment of a fine or court cost;

25 (5) a violation of a condition of release

underscoring material = new
[bracketed material] = delete

1 without bail, regardless of whether the payment is rebated,
2 suspended or probated; or

3 (6) an assignment to a diversion program or a
4 driver improvement school;

5 ~~[D.]~~ F. "director" means the director of the motor
6 vehicle division of the department;

7 ~~[E.]~~ G. "disqualification" means:

8 (1) a suspension, revocation or cancellation
9 of a commercial driver's license by the state or jurisdiction
10 that issued the commercial driver's license;

11 (2) a withdrawal of a person's privileges to
12 drive a commercial motor vehicle by a state or other
13 jurisdiction as the result of a violation of state or local law
14 relating to motor vehicle control other than a parking, vehicle
15 weight or vehicle defect violation; and

16 (3) a determination by the federal motor
17 carrier safety administration that a person is not qualified to
18 operate a motor vehicle;

19 ~~[F.]~~ H. "division" means the motor vehicle division
20 of the department;

21 ~~[G.]~~ I. "driving a commercial motor vehicle while
22 under the influence of alcohol" means:

23 (1) driving a commercial motor vehicle while
24 the driver has an alcohol concentration in the driver's blood
25 or breath of four one hundredths or more;

.174561.1SA

underscored material = new
[bracketed material] = delete

1 (2) driving a commercial motor vehicle while
2 the driver is under the influence of intoxicating liquor; or

3 (3) refusal to submit to chemical tests
4 administered pursuant to Section 66-8-107 NMSA 1978;

5 [~~H.~~] J. "employee" means an operator of a
6 commercial motor vehicle, including full-time, regularly
7 employed drivers; casual, intermittent or occasional drivers;
8 leased drivers; and independent owner-operator contractors,
9 while in the course of operating a commercial motor vehicle,
10 who is either directly employed by or under lease to an
11 employer;

12 [~~F.~~] K. "employer" means a person, including the
13 United States, a state and a political subdivision of a state
14 or their agencies or instrumentalities, that owns or leases a
15 commercial motor vehicle or assigns employees to operate such a
16 vehicle;

17 [~~J.~~] L. "fatality" means the death of a person as a
18 result of a motor vehicle accident;

19 [~~K.~~] M. "gross combination weight rating" means the
20 value specified by the manufacturer as the loaded weight of a
21 combination vehicle. In the absence of a value specified by
22 the manufacturer, gross combination weight rating shall be
23 determined by adding the gross vehicle weight rating of the
24 power unit and the total weight of the towed unit or units and
25 any load thereon;

.174561.1SA

underscored material = new
[bracketed material] = delete

1 ~~[H-]~~ N. "gross vehicle weight rating" means the
2 value specified by the manufacturer as the loaded weight of a
3 single vehicle;

4 ~~[M-]~~ O. "imminent hazard" means a condition that
5 presents a substantial likelihood that death, serious illness,
6 severe personal injury or a substantial endangerment to health,
7 property or the environment will occur before the reasonable
8 foreseeable completion date of a formal proceeding to lessen
9 the risk of that death, illness, injury or endangerment;

10 ~~[N-]~~ P. "noncommercial motor vehicle" means a motor
11 vehicle or combination of motor vehicles that is not a
12 commercial motor vehicle;

13 ~~[O-]~~ Q. "nonresident commercial driver's license"
14 means a commercial driver's license issued by another state to
15 a person domiciled in that state or by a foreign country to a
16 person domiciled in that country;

17 ~~[P-]~~ R. "out-of-service order" means a declaration
18 by an authorized enforcement officer of a federal, state,
19 Canadian, Mexican or local jurisdiction that a driver, a
20 commercial motor vehicle or a motor carrier operation is
21 temporarily prohibited from operating;

22 ~~[Q-]~~ S. "railroad-highway grade crossing violation"
23 means a violation of a provision of Section 66-7-341 or
24 66-7-343 NMSA 1978 or a violation of federal or local law or
25 rule pertaining to stopping at or crossing a railroad-highway

.174561.1SA

underscored material = new
[bracketed material] = delete

1 grade crossing;

2 [R-] T. "serious traffic violation" means
3 conviction of any of the following if committed when operating
4 a motor vehicle:

5 (1) speed of fifteen miles or more per hour
6 above the posted limits;

7 (2) reckless driving as defined by Section
8 66-8-113 NMSA 1978 or a municipal ordinance or the law of
9 another state;

10 (3) homicide by vehicle, as defined in Section
11 66-8-101 NMSA 1978;

12 (4) injury to pregnant woman by vehicle as
13 defined in Section 66-8-101.1 NMSA 1978 or a municipal
14 ordinance or the law of another state;

15 (5) any other violation of law relating to
16 motor vehicle traffic control, other than a parking violation,
17 that the secretary determines by regulation to be a serious
18 traffic violation. "Serious traffic violation" does not
19 include a vehicle weight or vehicle defect violation;

20 (6) improper or erratic lane changes in
21 violation of Section 66-7-317 NMSA 1978;

22 (7) following another vehicle too closely in
23 violation of Section 66-7-318 NMSA 1978;

24 (8) directly or indirectly causing death or
25 great bodily injury to a human being in the unlawful operation

.174561.1SA

underscoring material = new
[bracketed material] = delete

1 of a motor vehicle in violation of Section 66-8-101 NMSA 1978;

2 (9) driving a commercial motor vehicle without
3 possession of a commercial driver's license in violation of
4 Section 66-5-59 NMSA 1978;

5 (10) driving a commercial motor vehicle
6 without the proper class of commercial driver's license and
7 endorsements pursuant to Section 66-5-65 NMSA 1978 and the
8 Motor Carrier Safety Act for the specific vehicle group
9 operated or for the passengers or type of cargo transported; or

10 (11) driving a commercial motor vehicle
11 without obtaining a commercial driver's license in violation of
12 Section 66-5-59 NMSA 1978; and

13 [~~S.~~] U. "state of domicile" means the state in
14 which a person has a true, fixed and permanent home and
15 principal residence and to which the person has the intention
16 of returning whenever the person has been absent from that
17 state."

18 Section 5. Section 66-5-68 NMSA 1978 (being Laws 1989,
19 Chapter 14, Section 17, as amended) is amended to read:

20 "66-5-68. DISQUALIFICATION.--

21 A. The department shall disqualify a person from
22 driving a commercial motor vehicle for at least thirty days if
23 the federal motor carrier safety administration reports to the
24 division that the person poses an imminent hazard.

25 B. The department shall disqualify a person who

.174561.1SA

1 holds a commercial driver's license or who is required to hold
2 a commercial driver's license from driving a commercial motor
3 vehicle for a period of not less than one year, which shall run
4 concurrently with any revocation or suspension action for the
5 same offense, if the person:

6 (1) refuses to submit to a chemical test when
7 requested pursuant to the provisions of the Implied Consent
8 Act;

9 (2) is twenty-one years of age or more and
10 submits to chemical testing pursuant to the Implied Consent Act
11 and the test results indicate an alcohol concentration of eight
12 one hundredths or more;

13 (3) submits to chemical testing pursuant to
14 the Implied Consent Act and the test results indicate an
15 alcohol concentration of four one hundredths or more if the
16 person is driving a commercial motor vehicle;

17 (4) is less than twenty-one years of age and
18 submits to chemical testing pursuant to the Implied Consent Act
19 and the test results indicate an alcohol concentration of two
20 one hundredths or more; or

21 (5) is convicted of a violation of:

22 (a) driving a motor vehicle while under
23 the influence of intoxicating liquor or drugs in violation of
24 Section 66-8-102 NMSA 1978, an ordinance of a municipality of
25 this state or the law of another state;

.174561.1SA

underscored material = new
[bracketed material] = delete

1 (b) leaving the scene of an accident
2 involving a commercial motor vehicle driven by the person in
3 violation of Section 66-7-201 NMSA 1978 or an ordinance of a
4 municipality of this state or the law of another state;

5 (c) using a motor vehicle in the
6 commission of a felony;

7 (d) driving a commercial motor vehicle
8 after the driver's commercial driver's license is revoked,
9 suspended, disqualified or canceled for violations while
10 operating a commercial motor vehicle; or

11 (e) causing a fatality in the unlawful
12 operation of a motor vehicle pursuant to Section 66-8-101 NMSA
13 1978.

14 C. The department shall disqualify a person from
15 driving a commercial motor vehicle for a period of not less
16 than three years if any of the violations specified in
17 Subsection B of this section occur while transporting a
18 hazardous material required to be placarded.

19 D. The department shall disqualify a person from
20 driving a commercial motor vehicle for life if convicted of two
21 or more violations of any of the offenses specified in
22 Subsection B of this section, or any combination of those
23 offenses, arising from two or more separate incidents, but the
24 secretary may issue regulations establishing guidelines,
25 including conditions, under which a disqualification for life

.174561.1SA

underscored material = new
[bracketed material] = delete

1 under this subsection may be reduced to a period of not less
2 than ten years. This subsection applies only to those offenses
3 committed after July 1, 1989.

4 E. The department shall disqualify a person from
5 driving a [~~commercial~~] motor vehicle for life if the person
6 uses a commercial motor vehicle in the commission of any felony
7 involving the manufacture, distribution or dispensing of a
8 controlled substance or the possession with intent to
9 manufacture, distribute or dispense a controlled substance.

10 F. The department shall disqualify a person from
11 driving a commercial motor vehicle for a period of not less
12 than sixty days if convicted of two serious traffic violations
13 or one hundred twenty days if convicted of three serious
14 traffic violations, if the violations were committed while
15 driving a commercial motor vehicle, arising from separate
16 incidents occurring within a three-year period.

17 G. The department shall disqualify a person from
18 driving a commercial motor vehicle for a period of:

19 (1) not less than one hundred eighty days nor
20 more than two years if the person is convicted of a first
21 violation of an out-of-service order while transporting
22 hazardous materials required to be placarded pursuant to the
23 federal Hazardous Materials Transportation Act or while
24 operating a motor vehicle designed to transport more than
25 fifteen passengers, including the driver;

.174561.1SA

1 (2) not more than one year if the person is
2 convicted of a first violation of an out-of-service order; or

3 (3) not less than three years nor more than
4 five years if, during any ten-year period, the person is
5 convicted of any subsequent violations of out-of-service
6 orders, in separate incidents, while transporting hazardous
7 materials required to be placarded pursuant to that act or
8 while operating a motor vehicle designed to transport more than
9 fifteen passengers, including the driver.

10 H. The department shall disqualify a person from
11 driving a commercial motor vehicle for sixty days if:

12 (1) the person has been convicted of two
13 serious traffic violations in separate incidents within a
14 three-year period; and

15 (2) the second conviction results in
16 revocation, cancellation or suspension of the person's
17 commercial driver's license or noncommercial motor vehicle
18 driving privileges for sixty days.

19 I. The department shall disqualify a person from
20 driving a commercial motor vehicle for one hundred twenty days,
21 in addition to any other period of disqualification, if:

22 (1) the person has been convicted of more than
23 two serious traffic violations within a three-year period; and

24 (2) the third or a subsequent conviction
25 results in the revocation, cancellation or suspension of the

underscoring material = new
[bracketed material] = delete

1 person's commercial driver's license or noncommercial motor
2 vehicle driving privileges.

3 J. When a person is disqualified from driving a
4 commercial motor vehicle, any commercial driver's license held
5 by that person is invalidated without a separate proceeding of
6 any kind and the driver is not eligible to apply for a
7 commercial driver's license until the period of time for which
8 the driver was disqualified has elapsed.

9 K. The department shall disqualify a person from
10 driving a commercial motor vehicle for not less than:

11 (1) sixty days if the person is convicted of a
12 first violation of a railroad-highway grade crossing violation;

13 (2) one hundred twenty days if, during any
14 three-year period, the person is convicted of a second
15 railroad-highway grade crossing violation in a separate
16 incident; and

17 (3) one year if, during any three-year period,
18 the person is convicted of a third or subsequent railroad-
19 highway grade crossing violation in a separate incident.

20 L. After disqualifying, suspending, revoking or
21 canceling a commercial driver's license, the department shall,
22 within ten days, update its records to reflect that action.

23 After disqualifying, suspending, revoking or canceling a
24 nonresident commercial driver's privileges, the department
25 shall, within ten days, notify the licensing authority of the

.174561.1SA

underscored material = new
[bracketed material] = delete

1 state that issued the commercial driver's license.

2 M. When disqualifying, suspending, revoking or
3 canceling a commercial driver's license, the department shall
4 treat a conviction received in another state in the same manner
5 as if it was received in this state.

6 N. The department shall post and enforce any
7 disqualification sent by the federal motor carrier safety
8 administration to the department that indicates that a
9 commercial motor vehicle driver poses an imminent hazard.

10 O. The federal transportation security
11 administration of the department of homeland security shall
12 provide for an appeal of a disqualification for a commercial
13 driver's license hazardous materials endorsement on the basis
14 of a background check, and the department shall provide to a
15 hazardous materials applicant a copy of the procedures
16 established by the transportation security administration, on
17 request, at the time of application.

18 P. New Mexico shall conform to the federal
19 transportation security administration of the department of
20 homeland security rules and shall "look back" or review a
21 maximum of seven years for a background check."

22 Section 6. Section 66-5-71 NMSA 1978 (being Laws 1998,
23 Chapter 17, Section 5, as amended) is amended to read:

24 "66-5-71. PENALTIES FOR VIOLATION OF OUT-OF-SERVICE
25 ORDERS.--

.174561.1SA

underscored material = new
[bracketed material] = delete

1 A. A driver who is convicted of violating an
2 out-of-service order shall be subject to a civil penalty of not
3 less than [~~one thousand one hundred dollars (\$1,100) or more~~
4 ~~than two thousand seven hundred fifty dollars (\$2,750)] two
5 thousand five hundred dollars (\$2,500) for a first violation
6 and not less than five thousand dollars (\$5,000) for a second
7 or subsequent violation, in addition to disqualification as
8 provided in Subsection C of this section. The director shall
9 collect the penalty upon conviction.~~

10 B. An employer who is convicted of a violation of
11 Subsection C of Section 66-5-58 NMSA 1978 shall be subject to a
12 civil penalty of not less than two thousand seven hundred fifty
13 dollars (\$2,750) or more than eleven thousand dollars
14 (\$11,000). The director shall collect the penalty upon
15 conviction.

16 C. A driver who is convicted of violating an
17 out-of-service order shall be disqualified for:

18 (1) not less than ninety days or more than
19 one year if the driver is convicted of a first violation of an
20 out-of-service order;

21 (2) not less than one year or more than five
22 years if, during any ten-year period, the driver is convicted
23 of two violations of out-of-service orders in separate
24 incidents; and

25 (3) not less than three years or more than

underscored material = new
[bracketed material] = delete

1 five years if, during any ten-year period, the driver is
2 convicted of three or more violations of out-of-service orders
3 in separate incidents."

4 Section 7. Section 66-8-135 NMSA 1978 (being Laws 1978,
5 Chapter 35, Section 543, as amended) is amended to read:

6 "66-8-135. RECORD OF TRAFFIC CASES.--

7 A. Every trial court judge shall keep a record of
8 every traffic complaint, uniform traffic citation and other
9 form of traffic charge filed in the judge's court or its
10 traffic violations bureau and every official action and
11 disposition of the charge by that court.

12 B. Within ten days of the later of entry of
13 judgment and sentence or failure to appear on a charge of
14 violating the Motor Vehicle Code or other law or ordinance
15 relating to motor vehicles or the final decision of any higher
16 court that reviews the matter and from which no appeal or
17 review is successfully taken, every trial court judge,
18 including children's court judges, or the clerk of the court in
19 which the entry of judgment and sentence or failure to appear
20 occurred shall prepare and forward to the department an
21 abstract of the record containing:

22 (1) the name and address of the defendant;

23 (2) the specific section number and common
24 name of the provision of the NMSA 1978 or local law, ordinance
25 or regulation under which the defendant was tried;

.174561.1SA

underscoring material = new
[bracketed material] = delete

1 (3) the plea, finding of the court and
2 disposition of the charge, including fine or jail sentence or
3 both, forfeiture of bail or dismissal of the charge;

4 (4) an itemization of costs assessed to the
5 defendant;

6 (5) the date of the hearing;

7 (6) the court's name and address;

8 (7) whether the defendant was a first or
9 subsequent offender; and

10 (8) whether the defendant was represented by
11 counsel or waived the right to counsel and, if represented, the
12 name and address of counsel.

13 C. The abstract of record prepared and forwarded
14 under Subsection B of this section shall be certified as
15 correct by the person required to prepare it. With the prior
16 approval of the department, the information required by
17 Subsection B of this section may be transmitted electronically
18 to the department. Report need not be made of any disposition
19 of a charge of illegal parking or standing of a vehicle except
20 when the uniform traffic citation is used.

21 D. When the uniform traffic citation is used, the
22 court shall provide the information required by Subsection B of
23 this section in the manner prescribed by the department.

24 E. Every court of record shall also forward a like
25 report to the department upon conviction of any person of any

.174561.1SA

underscored material = new
[bracketed material] = delete

1 felony if a motor vehicle was used in the commission. With the
2 prior approval of the department, the information required by
3 this subsection may be submitted electronically to the
4 department. The report shall be forwarded to the department
5 within ten days of the final decision of the court or of any
6 higher court that reviews the matter and from which the
7 decision of no appeal or review is successfully taken.

8 F. The failure or refusal of any judicial officer
9 to comply with this section is misconduct in office and grounds
10 for removal.

11 G. Except as set forth in Subsection H of this
12 section for records of a person holding a commercial driver's
13 license, the department shall keep records received on
14 motorists licensed in this state at its main office. Records
15 showing a record of conviction by a court of law shall be open
16 to public inspection during business hours for three years from
17 the date of their receipt, after which they shall be destroyed
18 by the department except for records of convictions under
19 Sections 66-8-101 through 66-8-112 NMSA 1978, which may not be
20 destroyed until fifty-five years from the date of their
21 receipt. Any record received on a motorist licensed in another
22 state or country shall be forwarded to the licensing authority
23 of that state or country.

24 H. The department shall keep records received on a
25 person holding a commercial driver's license or an individual

.174561.1SA

underscoring material = new
[bracketed material] = delete

1 driving a commercial motor vehicle who was required to have a
2 commercial driver's license but was driving a commercial motor
3 vehicle without the appropriate license in its main office.

4 Records showing a record of conviction by a court of law shall
5 be open to public inspection during business hours for fifty-
6 five years from the date of their receipt. Any record received
7 on a person holding a commercial driver's license licensed in
8 another state or country shall be forwarded to the licensing
9 authority of that state or country."

10 Section 8. REPEAL.--Section 66-5-28 NMSA 1978 (being Laws
11 1978, Chapter 35, Section 250, as amended) is repealed.

12 Section 9. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2009.